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From: Lohse, Timothy
Sent: Monday, February 11, 2002 8:08 AM
To: 'Joe Bogdan'; Jan Wasowicz (E-mail)
Cc: Lohse, Timothy
Subject: OPAL CIP



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Jan,

We have not talked in awhile. The deadline for the OPAL CIP (which Joe previously sent to you in November) missing parts is rapidly approaching. We need to file the Declaration/Power of Attorney document and assignment by this Friday (2/15) or the application will be abandoned. If you refuse to sign the documents, we will file a petition to file without your signature. If you later decide to sign the document, you may do so.

I have not sent the patent application and drawings again with this message since it is very long. However, if you would like me to resend the application to you, please let me know.

I attach a preliminary amendment that removes the claims directed towards the fluency subtest since you indicated (correctly) that it was invented by Art Maelander and we have not named him as an inventor. I also attach the Declaration/Power of Attorney and Assignment forms which need to be signed. If I do not receive any response from you, I will assume that you are still refusing to sign the forms and we will file the petition.

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COPY OF PAPERS
ORIGINALLY FILED

Attorney Docket No. 2100632-991121

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jan Wasowicz et al.

Serial No: 09/912,681

Group Art Unit: N/A

Filed: July 24, 2001

Examiner: Unknown

Title: DIAGNOSTIC SYSTEM AND METHOD FOR PHONOLOGICAL AWARENESS, PHONOLOGICAL PROCESSING, AND READING SKILL TESTING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as FIRST CLASS MAIL in an envelope addressed to: BOX MISSING PARTS, Commissioner of Patents and Trademarks, Washington, D.C. 20231, on:

February 15, 2002

Linda West

* * *

DECLARATION OF JOSEPH BOGDAN IN SUPPORT OF PETITION
UNDER 37 C.F.R. § 1.47(a) and 35 USC § 116
FOR FILING OF APPLICATION WHEN AN INVENTOR REFUSES TO SIGN

THE COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

I, Joseph J. Bogdan, do hereby declare and state as follows:

1. I am an individual over the age of 18, and am the General Counsel of Cognitive Concepts, Inc. ("CCI"), an Illinois corporation with an address of 990 Grove Street, Suite 300, Evanston, Illinois 60201. I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would competently testify thereto.

2. CCI is the owner of an invention named "DIAGNOSTIC SYSTEM AND METHOD FOR PHONOLOGICAL AWARENESS, PHONOLOGICAL PROCESSING, AND READING SKILL TESTING" (the "Invention"), and is in the process of prosecuting with the United States Patent & Trademark Office the patent application for that invention

(the "Patent"), as well as a continuation (the "Continuation") and a continuation in part (the "CIP") with respect thereto. The CIP is U.S. Patent Application Serial No. 09/912,681 which is the above-identified patent application and is the patent for which a petition to file when the inventor refuses to sign is being submitted.

3. An inventor listed on the Patent and, consequently, the Continuation and the CIP as well, is Dr. Jan Wasowicz, who was a founder and is a major shareholder of CCI, but who is no longer involved in the day-to-day affairs of CCI. In 1996, during her employment with CCI, Dr. Wasowicz executed a Proprietary Rights Agreement that obligated her, among other things, to assign her intellectual property rights to CCI. In 1998, Dr. Wasowicz also executed an Assignment for the Patent which assigned her rights to CCI and obligated her to assist CCI in prosecuting of all of the patents that resulted from the Invention.

4. After Dr. Wasowicz left CCI, she executed certain written agreements that obligate her to continue to cooperate with CCI in certain affairs, including in the prosecution of its patents and protection of its other intellectual properties.

5. On or about October 29, 2001, I sent to Dr. Wasowicz a letter, a true and correct copy of which is attached as Exhibit A, in which I requested that Dr. Wasowicz complete, sign and return to me a Declaration and Power of Attorney (the "DPOA") and Assignment (the "Assignment") pertaining to the CIP.

6. Prior to November 7, 2001, Dr. Wasowicz requested from me, and I provided to her on November 7, certain documents including the CIP specification with claims and drawings.

7. Between November 7 and 26, 2001, I had certain telephone conversations with Dr. Wasowicz relative to her obligation to execute and return to CCI the DPOA and the Assignment. On each occasion, Dr. Wasowicz indicated that she had not yet completed her review of the documentation, and was not yet ready to sign.

8. On or about November 26, 2001, I met with Dr. Wasowicz, and she: (i) stated her position that she had no existing obligation to execute and return to CCI either the DPOA, the Assignment or any other document; and (ii) offered to enter into a written agreement with CCI (*another* agreement, in fact, since there are already no less than four [4] written agreements *already* in place by and between Dr. Wasowicz and CCI), pursuant to which she *would* (according to her) have an obligation to execute and return to CCI the DPOA, the Assignment and other patent-related documents. I told Dr. Wasowicz at that time that I would review the documentation in place, and get back to her with specifics relating to her *already existing* obligation to execute and return to CCI the DPOA, the Assignment and other documents.

9. Also, on or about November 26, 2001, I spoke with Dr. Wasowicz about specifics relating to her *already existing* obligation to execute and return to CCI the DPOA, the Assignment and other documents. At that time, Dr. Wasowicz iterated her position that she had no existing obligation to execute and return to CCI either the DPOA, the Assignment or any other document. I: (i) told Dr. Wasowicz that I did not believe that CCI could accept the proposal she had made on November 25, but that I would get back to her;

and (ii) urged Dr. Wasowicz to reconsider her position, and she indicated a need to speak with certain third parties before she would/could proceed any further.

10. At some point between November 26 and December 17, 2001, I spoke with Dr. Wasowicz and informed her that CCI could not accept the proposal she had made on November 25, and, consequently, that she would need to comply with her *already existing* obligation to execute and return to CCI the DPOA, the Assignment and other documents.

11. On or about December 17, 2001, I spoke with Dr. Wasowicz, again iterating the specifics of her *already existing* obligation to execute and return to CCI the DPOA, the Assignment and other documents. At that time, Dr. Wasowicz: (i) iterated her position that she had no existing obligation to execute and return to CCI either the DPOA, the Assignment or any other document; and (ii) proposed *another* scenario in which another new agreement would be executed to gain her cooperation with respect to patent matters. I: (i) told Dr. Wasowicz that I did not believe that CCI could accept this new proposal, but that I would check and get back to her; and (ii) urged Dr. Wasowicz to reconsider her position, and she indicated that she would not do so.

12. Also on or about December 17, 2001: (i) I spoke with Dr. Wasowicz and informed her that CCI could not accept the proposal she had made on December 17, and, consequently, that CCI would proceed to prosecute the CIP without her cooperation; and (ii) I attempted to telephone Lewis Greenblatt, an attorney known to me to have represented Dr. Wasowicz in the past, and left a voice mail message which has not to date been returned.

13. On or about December 20, 2001, I telephoned Dr. Wasowicz and left a voice mail message indicating to her that without her immediate cooperation on the CIP, CCI would immediately proceed with the prosecution of the CIP *without* her cooperation.

14. On or about December 21, 2001, I received an e mail from Dr. Wasowicz, in which she acknowledged my voicemail message from the previous day, and indicated that she had no intention of further addressing the issues between her and CCI at any time prior to December 26, 2001.

15. Also on or about December 21, 2001, I sent an e mail to Dr. Wasowicz, acknowledging her e-mail message of earlier that day, indicating that CCI could not wait until December 26 to resolve the issues, and further indicating that CCI would be proceeding on December 21 with the prosecution of the CIP *without* her cooperation.

16. Also on or about December 21, 2001, CCI sent to Dr. Wasowicz a letter (that I had prepared on December 20, 2001; hence the date on the letter), a true and correct copy of which is attached as Exhibit B, in which CCI, among other things: (i) demanded that Dr. Wasowicz comply with her obligation to execute and return to CCI the DPOA, the Assignment and other documents; and (ii) informed Dr. Wasowicz that, in light of her refusal as of that date to comply with her obligation to execute and return to CCI the DPOA, the Assignment and other documents, CCI intended to immediately proceed with the prosecution of the CIP *without* her cooperation.

17. On or about December 26, 2001, I received an e mail from Dr. Wasowicz, in which she informed me of general parameters of her upcoming schedule, but did not

substantively address the issues between her and CCI relative to patents.

18. On or about December 27, 2001, I received a letter dated December 26, 2001 from Dr. Wasowicz, essentially, reiterating her position that she had no existing obligation to execute and return to CCI either the DPOA, the Assignment or any other document.

19. On or about December 28, 2001, CCI sent a letter to Dr. Wasowicz, acknowledging receipt of the letter received from her on December 27, and iterating its previously conveyed positions.

20. On or about January 2, 2002, I had a conversation with Frederick J. "Rick" Sudekum, an attorney representing Dr. Wasowicz. In my conversation with Mr. Sudekum, he and I iterated Dr. Wasowicz's and CCI's positions, respectively, and Mr. Sudekum indicated that he would be contacting me again during the week of January 14, to discuss the matter further.

21. Despite the above repeated requests in conversations and communications with Dr. Wasowicz and her attorneys since January 2, 2002, she has refused to execute the Declaration/Power of Attorney form for the CIP.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. I further declare that this Declaration is executed this 4th day of January, 2002, at Evanston, Illinois.

Respectfully submitted,



Joseph J. Bogdan
Vice President and General Counsel
Cognitive Concepts, Inc.